

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM 3
CAUSE NO. 49D03-9010-MI-1527

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
ANTHONY K. McCULLOUGH, doing)
Business as Circle City Imports,)
)
Defendant.)

FILED
123 OCT 24 2007
Charlottesville White
CLERK OF THE MARION CIRCUIT COURT

**AGREED ENTRY ON THE STATE'S VERIFIED MOTION FOR RULE TO
SHOW CAUSE AND STIPULATION TO JUDGMENT AGAINST DEFENDANT
ANTHONY K. McCULLOUGH**

The Plaintiff, State of Indiana by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmuller, having filed its Verified Motion for Rule to Show Cause against Defendant Anthony K. McCullough, and the Defendant having been served with said Motion and being represented by counsel, the parties hereby file this Agreed Entry and Stipulation of Judgment against Defendant McCullough and advise the Court of the following:

1. The Defendant Anthony K. McCullough acknowledges service of the State's Verified Motion for Rule to Show Cause and Order to Appear at the hearing currently scheduled for Wednesday October 24, 2007 at 2:00 p.m.
2. On July 23, 1992, this Court entered a judgment against the Defendant, Anthony McCullough, enjoining him and his officers, directors, agents, representatives, employees, successors and assigns, from engaging in conduct in violation of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, Ind. Code § 9-17-3-3

et seq., Ind. Code § 9-19-9-7, Ind. Code § 9-23-3 *et seq.*, and 15 U.S.C. § 2309 and 16 C.F.R. § 455. Specifically, the Court enjoined Anthony McCullough from the following:

- a. soliciting or engaging in a consumer transaction without a permit or other license required by law, including selling or offering for sale motor vehicles unless the Defendant is in possession of a valid motor vehicle dealer license as defined by Ind. Code § 9-23 *et seq.*, and is in good standing with the Bureau of Motor Vehicles;
- b. selling or delivering to consumers motor vehicles unless at the time of the sale or delivery, the Defendant is in possession of and delivers to the consumer the title to the motor vehicle offered for sale, as required by Ind. Code § 9-17-3-3(a) and that said title is in marketable condition;
- c. failing to post in any vehicle offered for sale by the Defendant the disclosure form required by 15 U.S.C. § 2309 and 16 C.F.R. § 455.1, the Used Motor Vehicle Trade Regulation Rule;
- d. making representations, either express or implied, that the Defendant would be able to complete the subject of a consumer transaction within a specified period of time, if the Defendant knows or reasonably should know that he cannot; and
- e. making representations as to the characteristics, uses, or benefits of the subject of a consumer transaction, if the Defendant knows or reasonably should know that such representations are false.

3. On the date of the aforementioned judgment, Ind. Code §9-17-3-3, required a dealer to provide a vehicle purchaser with a marketable title on the date of sale. Indiana's title delivery law has since been amended and now requires a dealer to deliver the certificate of title to the purchaser at the time of the sale or delivery; however, if a dealer cannot deliver title to a purchaser on the date of sale or delivery, certificate of title can be conveyed within 21 days after the date of sale if all of the following conditions exist:

- (A) The seller is a licensed vehicle dealer by the state.
- (B) The dealer is not able to deliver the certificate of title at the time of sale or transfer.
- (C) The dealer reasonably believes that it will be able to deliver the certificate of title, without a lien or an encumbrance on the title, within the twenty-one (21) day period.
- (D) The dealer provides the purchaser with a 21-day affidavit, as prescribed by Ind. Code §9-17-3-3.1 of this chapter.
- (E) The purchaser has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

✓ 3. On or around May 28, 2004, the Defendant Anthony McCullough incorporated Exotic Motorsports, Inc. as for-profit domestic corporation with the Indiana Secretary of State's Office. Defendant McCullough is the sole principal of the corporation and is identified as the president, secretary and registered agent of Exotic Motorsports, Inc.

4. On or about July 25, 2006, the Office of the Attorney General received a consumer complaint against Exotic Motorsports from Jimmie and Susan McAfee ("the McAfees"). The Defendant, doing business as Exotic Motorsports Inc., sold a 1989 Mercedes-Benz SEL to the McAfees on or around May 1, 2006. The McAfees signed a retail installment contract in which they agreed to pay the Defendant over a period of time for their vehicle. The Defendant did not provide the McAfees with the Mercedes' title on the date of sale, nor did the Defendant provide the McAfees with a 21-day affidavit pursuant to Ind. Code §9-17-3-3.1.

5. After the date of purchase the Defendant provided the McAfees with three (3) successive temporary tags for the Mercedes. In July 2006 the Mercedes broke down on Kentucky Avenue in Indianapolis and the vehicle was ultimately towed to impound. The McAfees have been unable to retrieve the vehicle from impound because they do not have the Mercedes' title.

6. Prior to the Mercedes being towed, the McAfees paid the Defendant a total of \$1,585.00.

7. On or about February 2, 2007, the Office of the Attorney General received a consumer complaint against Exotic Motorsports from Marcus Moore ("Moore"). The Defendant sold a 1995 GMC to Moore on or around June 22, 2006. Mr. Moore signed a retail installment contract in which he agreed to pay the Defendant for the GMC over a period of time. The Defendant did not provide Mr. Moore with the GMC title on the date of purchase, nor did the Defendant provide Mr. Moore with a 21-day affidavit as permitted by Ind. Code §9-17-3-3.1.

8. Since the date of purchase, the Defendant has provided Mr. Moore with at least two temporary tags. To date, Mr. Moore has paid the Defendant a total of \$3,792.00. This amount is comprised of an \$800.00 down payment and \$2,992.00 in payments; however the Defendant has failed to deliver the GMC title to Mr. Moore.

9. On or about March 21, 2007, the Office of the Attorney General received a consumer complaint against Exotic Motorsports from Tonya Jones ("Jones). The Defendant sold a 1999 Ford Expedition to Jones on or around December 30, 2006. As part of the purchase, Jones traded in her 1999 Pontiac Grand Prix and the Defendant agreed to payoff Heritage Acceptance, the Grand Prix's lienholder, in the amount of \$6,625.00.

10. To date, the Defendant has failed to payoff the Jones trade vehicle.

11. At the time of purchase, the Defendant neither provided Ms. Jones with the Ford Explorer's title nor did he provide her with a 21-day affidavit pursuant to Ind. Code §9-17-3-3.1. Since the date of purchase, the Defendant has provided Ms. Jones with at least one metal dealer license plate to use on the Ford Explorer. To date, the Defendant has failed to deliver the Explorer's title to Jones.

12. On or around April 23, 2007, the Office of the Attorney General received a complaint against Exotic Motorsports from Richard Lee Pack, Jr. ("Pack"). Pack purchased a 1998 Chevrolet Trailblazer from the Defendant on February 27, 2007 for \$2,300.00 cash.

13. The Defendant did not provide Pack with the Trailblazer's title on the date of purchase, and in fact provided Pack with at least two (2) successive temporary tags

after the purchase. To date, the Defendant has failed to deliver the Trailblazer title to Mr. Pack.

14. On or about January 6, 2006, the Office of the Attorney General received a referred complaint from the Indiana Bureau of Motor Vehicles (“BMV”) concerning a complaint filed by Cassandra Cavanaugh (“Cavanaugh”) against Exotic Motorsports. In July 2005, Cavanaugh entered an agreement with the Defendant in which she allowed the Defendant to take possession of her leased, 2005 Toyota Avalon, for the purposes of selling the vehicle and paying off Cavanaugh’s lease with Toyota Motor Credit Corporation.

15. The Defendant sold the vehicle through Auto Dealers Exchange auto auction in July or August of 2005, but to date has failed to payoff Cavanaugh’s lease with Toyota.

16. On February 2, 2007, the Indiana Bureau of Motor Vehicles Dealer and Special Sales Division cancelled Exotic Motorsports, Inc.’s used motor vehicle dealer license.

17. The Defendant, Anthony K. McCullough, acknowledges that he violated the July 23, 1992 injunction entered against him, his officers, directors, agents, representatives, employees, successors and assigns, by:

- a. selling a vehicle to Mr. Pack without having a valid motor vehicle dealer’s license as required by Ind. Code §9-23-1 *et seq.*;
- b. failing to deliver vehicle titles to consumers McAfee, Moore, Jones and Pack, in violation of Ind. Code §9-17-3-3;
- c. representing expressly or by implication that he would deliver titles to

consumers McAfee, Moore, Jones and Pack, within a specified period of time;

d. representing expressly or by implication that he would payoff Toyota Motor Credit Corporation on behalf of Ms. Cavanaugh and Heritage Acceptance on behalf of Ms. Jones, within a specified period of time;

e. representing that the sale of motor vehicles to consumers McAfee, Moore, Jones and Pack, had characteristics, uses or benefits that the sales did not have (to wit: that the consumers would receive titles);

f. representing that the Moore transaction had characteristics, uses or benefits the Defendant knew or should have know it did not have (to wit: that the purchase included an Indiana Warranty that would cover various repairs to the McAfee vehicle); and,

g. representing that the Cavanaugh and Jones transactions had characteristics, uses or benefits that the Defendant knew or should have known they did not have (to wit: that Cavanaugh's lease and Jones' trade vehicle lienholder would be paid off).

18. Defendant McCullough owes consumers McAfee and Cavanaugh monetary restitution as follows: McAfee (\$1,583.40) and Cavanaugh (\$30,000.00). The Defendant agrees the monies owed to these consumers should be reduced to a money judgment against him, unless paid by Nov. 15, 2007 in the total amount of \$31,585.00.

19. Defendant McCullough owes consumers: Moore and Pack titles for the vehicles they purchased from Exotic Motorsports. McCullough agrees to deliver the subject titles to the Office of the Attorney General on or before Nov. 7 ~~October 31~~, 2007. The

The parties agree the Cavanaugh restitution shall be reduced to a lesser amount, ~~approx \$17,000~~
The amount to be agreed to w/i 7 days.

Defendant further agrees to assign each title to its respective purchaser free and clear of all liens and encumbrances, *except Moore vehicle for balance of sales price*

20. Should the Defendant fail to deliver titles to the Office of the Attorney General as specified in paragraph 19, the Defendant agrees that consumers Moore and Pack are owed a complete refund of all monies paid for their respective vehicles. The Defendant agrees that the monies owed to these consumers should be reduced to a money judgment against him in the total amount of \$6,092.00

21. The parties acknowledge that this agreed entry and stipulation of judgment, purges Defendant McCullough of the present contempt allegations. Therefore the parties agree to dismiss the hearing on the State's Verified Motion for Rule to Show Cause currently set for October 24, 2007 at 2:00 p.m.

22. The parties acknowledge and agree that the terms of the July 23, 1992 judgment and injunction remain in full force and effect and are binding against Anthony K. McCullough.

23. *Ms. Jones compliant has been dealt with in small claims court*

24. *Upon completion of all matter by Defendant, AG will submit better to Secy. of State, that matter resolved*
Respectfully submitted, *Mary Ann Wehmue*

Mary Ann Wehmue
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[Signature]
Anthony K. McCullough,
Defendant

[Signature]
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Defendant's Counsel
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~~20. AG to show~~

RECOMMENDED FOR APPROVAL OCT 24 2007

[Signature]

MAGISTRATE

APPROVED AND ORDERED

[Signature]
JUDGE